

ANDERSON EXHIBIT 27

Lehn, Russell

0001
1 UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2
3 In re: PHARMACEUTICAL INDUSTRY
4 AVERAGE WHOLESALE PRICE
5 LITIGATION,
6
7 THIS DOCUMENT RELATES TO:
8 US ex rel. Ven-a-Care of the
Florida Keys, Inc., v. Abbott
Laboratories, Inc.
9 NO. 07-CV-11618-PBS
10
11 MDL No. 1456
12 Civil Action No.
13 01-12257-PBS

10 VIDEOTAPED DEPOSITION OF RUSSELL LEHN

13
14 DATE TAKEN: January 15, 2009
15 TIME: 9:05 a.m. - 12:45 p.m.
16 PLACE: Hotel Indigo
17 1223 Boulevard of the Arts
Sarasota, Florida

1 APPEARANCES:

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H. CLAY BARNETT, III, ESQUIRE

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23 Q. And other than the fact that they were brand
24 products, was there a reason why list price was the
25 basis for the calculation of the rebates? I'll
0060
1 rephrase.

2 A. Please do.

3 Q. Sir, were the list prices used as the basis for
4 the rebate calculations because pharmacies were
5 typically paying list price to buy the drugs?

6 A. There may be -- they may have been buying
7 everything at list price. I don't think it had anything
8 to do with how they were buying it.

9 Q. Looking at the erythromycin products listed on
10 Exhibit A, do you see a notation there that those
11 rebates are calculated off of Abbott wholesale deal
12 price?

13 A. Yes, I do.

14 Q. Can you explain why the rebates for the
15 erythromycins were calculated off of the wholesale deal
16 price instead of the list price?

17 A. To reflect the competitive nature of those
18 products in the market.

19 Q. How did calculating the rebates off of the deal
20 price reflect the competitiveness?

21 A. Well, they were lower than those off of list
22 price.

23 Q. The deal prices were lower than the list
24 prices?

25 A. That's correct, of the -- wholesaler deal price
0061

1 would have been lower than the list price.

2 Q. What -- what is the wholesale deal price in
3 this context?

4 A. I don't know what it is.

5 Q. No, no, no, not the exact number, sir. I'm
6 asking conceptually, is the wholesale deal price the
7 WAC?

8 A. No. It was the wholesale deal price.

9 Q. The price that reflected what?

10 A. The price that reflected the purchase price of
11 those products that were bought on deal or contract by
12 the wholesaler.

13 Q. What about situations where wholesalers weren't
14 buying at the deal price?

15 A. It's -- it wouldn't have made any difference.

16 The rebate was calculated off of the -- off of the deal
17 price.

18 Even though many of those purchases may have
19 been at list, the amount that was reimbursed was still
20 calculated from this, from the deal price.

21 Q. What -- were the rebates calculated off of the
22 wholesale deal price because the assumption was that all
23 the wholesalers would be paying deal price?

24 MR. BERLIN: Objection, form.

25 THE WITNESS: No. I'm sorry.

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1 MR. BERLIN: Go ahead. You can answer over my
2 objection.

3 THE WITNESS: I did. Yeah, I know.

4 Could you restate it.

5 BY MR. ANDERSON:

6 Q. Yes, sir. Were the -- were the rebates for the
7 erythromycin products calculated off of deal price

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8 because the assumption was all wholesalers were paying
9 deal price?

10 MR. BERLIN: Same objection.

11 THE WITNESS: All wholesalers were paying deal
12 price? No, not -- all wholesalers were not paying
13 deal price, but the assumption was that that was
14 the -- the price model standard from which we -- we
15 were going to calculate the rebate.

16 BY MR. ANDERSON:

17 Q. Was the -- was the assumption that the deal
18 prices more accurate reflected the market prices?

19 MR. BERLIN: Objection, form.

20 THE WITNESS: Was there a relationship between
21 those? Probably so.

22 BY MR. ANDERSON:

23 Q. Is it true, sir, that with respect to the
24 erythromycins, the deal prices were more representative
25 of the market prices than the list prices?

0063 1 A. Probably so.

2 MR. BERLIN: Wait, wait. Let me get in an
3 objection.

4 BY MR. ANDERSON:

5 Q. The --

6 MR. BERLIN: But -- both of you, let me get an
7 objection.

8 MR. ANDERSON: Okay.

9 MR. BERLIN: Objection, form.

10 BY MR. ANDERSON:

11 Q. I noticed that this Exhibit A, sir, is dated
12 April 22nd, 1993.

13 A. Yes.

14 Q. And then your name is listed there, correct?

15 A. Uh-huh.

16 Q. Did you --

17 A. Yes.

18 Q. -- draft Exhibit A?

19 A. Did I or one of my people draft it?

20 Q. Yes, sir.

21 A. I would think so.

22 Q. And that's why your name's on it?

23 A. My name would have been on any contract.

24 Q. Did you approve of the use of deal price as the
25 foundation for calculating the rebates on the

0064 1 erythromycins?

2 A. Did I approve? It was approved by the
3 marketing group.

4 Q. Within Abbott PPD?

5 A. Yes.

6 Q. And then, in turn, that information was
7 forwarded on to you?

8 A. That's correct.

9 Q. And that's the same marketing group that
10 ultimately was -- whose actions were ultimately approved
11 by the president of PPD?

12 A. That's correct. In this case, there would have
13 been several marketing groups.

14 Q. Can you explain why the drugs that are not
15 erythromycin products, such as Biaxin and Depakene, had
16 their rebates calculated off of list price as opposed to
17 deal price?

18 A. Yes.

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19 Q. And what's that explanation?
20 A. There were no deal prices for those products.
21 Q. Is it true that it was pretty rare for a PPD
22 product to be sold at deal prices?

23 MR. BERLIN: Objection to form.
24 BY MR. ANDERSON:
25 Q. I'll be more specific. Would -- is it true,

0065 1 sir, that other than the erythromycin multi-source
2 products, it was pretty rare for a PPD product to be
3 sold at a wholesale deal price?

4 MR. BERLIN: Objection, form.
5 THE WITNESS: Yes.
6 BY MR. ANDERSON:
7 Q. In looking at the percentages used to calculate
8 the rebates off of wholesale deal price for the
9 erythromycins, I see one product in the middle of page
10 11 known as Ery Derm with a 47 percent rebate, which is
11 significantly higher than the other rebate percentages.
12 Do you see that?

13 A. Yes.
14 MR. BERLIN: Move to strike counsel's
15 commentary.

16 BY MR. ANDERSON:
17 Q. Can -- can you explain why that percentage is
18 higher than the other percentages?

19 A. No.
20 Q. Is it likely that that higher percentage
21 reflects greater market price competition on the Ery
22 Derm product as opposed to the other products?

23 A. Probably.
24 Q. How did you or people in the PPD pricing
25 department go about evaluating the prevailing market

0066 1 prices in setting these rebate percentages?

2 A. I don't recall.
3 Q. Were there sources for market price information
4 that you-all had access to?

5 A. Were there sources for?
6 Q. Market price information.
7 A. Market price information?

8 Q. Yes, sir.
9 A. Yes.

10 Q. Such as what?
11 A. Any competitive price that was picked up by any
12 of our salespeople in the field.

13 Q. Were there more structured sources of price
14 information, such as IMS, that Abbott PPD had access to?

15 A. Well, we had access to IMS, but I don't recall

16 that being a price source of market pricing.

17 Q. How did you or others in PPD pricing use the
18 IMS data?

19 A. I didn't use it a lot. It was used by
20 marketing groups mainly to look at prescription data and
21 how prescriptions were written and how prescriptions
22 were dispensed.

23 Q. You can set that aside for just a moment, but
24 I'm going to -- I'm going to put a new sticker on it.
25 (Lehn Exhibit No. 3 was marked for

0067 1 identification.)
2 Q. Take a look at what's been marked as Lehn
3 Exhibit 3, please. Do you recognize this type of